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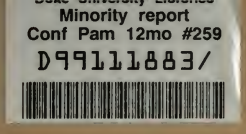
Minority report
Conf Pam 12mo #259
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Reported by Mr. Hall, of New-Hanover.

W. W. Holden, Printer to the State.

MINORITY REPORT UPON THE SUBJECT OF THE SUSPENSION OF THE WRIT OF HABEAS CORPUS.

The undersigned, one of the committee on the part of the Senate, to whom was referred that portion of the Governor's Message touching the repeal of the act of Congress suspending the privilege of the writ of *habeas corpus*, not concurring in the views embodied in the resolutions submitted by the chairman of that committee, begs leave to submit the following report:

In this, the very crisis of our destiny, when our fate as a free people hangs trembling in the balance, when every energy, every resource, and entire unanimity among our people is indispensably requisite to hurl back the present gigantic, and, as we trust, final assault of the enemy, I deem that the paramount duty of this Legislature, with a view to our speedy independence, is to strengthen the Executive arm, to provide for supplies and reinforcements to the army, and to care for the wants of the families of our soldiers; and that the introduction of other subjects of legislation at this time, tending to question the patriotism and ability of our Confederate rulers and legislators, leading to debates of a party and political character, and enuring to distractions and divisions of sentiment among our people, is unwise, ill-timed, impolitic, and fraught with danger to our cause. Nor does he accept as true, facts stated in the resolutions. He denies the repeated and manifest infractions of the Constitution by the Congress of the Confederate States, and has yet to be pointed

to a single instance. If reference be made to the acts for conscription, the anti-substitute law, and the law for impressments, the answer is, that the courts of the country are the only competent tribunals to decide upon the unconstitutionality of these measures; and that by every supreme judicial tribunal in the States of the Confederacy, in which this question has been tested, these laws have been declared to be constitutional. Neither does he admit, as stated in the second resolution, that the act to suspend the privilege of the writ of *habeas corpus* "clothes the Executive with judicial functions which Congress cannot constitutionally confer even on the judiciary itself, and set at naught the most emphatic and solemn guarantees of the Constitution."

The *power* in Congress to suspend the privilege of the writ when in cases of invasion or rebellion the public safety may, in its opinion, require it, is indisputable. If it be contended that the act in question is unconstitutional for the reason that it justifies arrests other than upon judicial warrants supported by oath or affirmation, and is in derogation of some of the other safeguards of personal liberty as engrafted upon our Bill of Rights and Constitution from the English Magna Charta and Bill of Rights, the answer is to be found in the fact that these provisions were meant to apply to a nation at peace with foreign powers, and in the enjoyment of domestic tranquility; and the very grant in the same instrument, the Constitution, of the power of Congress to suspend the privilege of the great writ, carries with it necessarily, and to make such suspension effectual, the suspension for the time being of these personal privileges. In times of imminent deadly peril to the nation, when its very existence is jeoparded, these ordinary peronal privileges must be sacrificed, and are made subservient and subordinate to the safety and existence of the nation and government. The Executive must be authorized to act *promptly;* and the imperative necessities of the case, the good of the whole demand that the ordinary formalities of the Law, with its inevitable delay should, for the

crisis, be dispensed with. The suspension of the privilege of the writ is an extraordinary measure—extra judicial in its character, and to be resorted to only in cases of dire emergency. Its exercise is incompatible with the personal privileges vouchsafed to the individual in other sections of the Constitution, and when the emergency arises these personal privileges must be suspended.

It is indisputable that in England, from whence mainly we derive our ideas of personal liberty, as embodied in her Bill of Rights and Magna Charta, during the many and different periods in which the privilege of the writ has been suspended, in the large majority of cases, where arrests were made, they were made by military authority, or by warrants issuing from the Home Secretary or other departments of State by order of the Executive branch of the government, and not by virtue of judicial warrants supported by oath or affirmation. The undersigned further construes the 3d section of the act referred to by which the President "shall cause proper officers to investigate the cases of all persons arrested," as a provision for their benefit, and to ensure them more speedy discharge if improperly detained, than they could otherwise obtain in due course of law.

The undersigned submits that if the third resolution means anything, it means that in no event, nor under any possible circumstances, can the suspension of the privilege of the writ of *habeas corpus* be necessary or justifiable. This impugns the wisdom of the very framers of our constitution, for if such be the case, whence the propriety or necessity of making an express provision for its suspension, by conferring upon Congress the power in certain cases to suspend it?

The undersigned understanding that only such portions of the Governor's message as referred to the act suspending the privilege of the writ of *habeas corpus*, was referred to the committee of which he constituted a part, does not feel at liberty to consider and report upon the subject matter of the 4th Resolution, especially as another committeee has been appointed to whom that subject was specially referred. But

in order that his position may not be misunderstood, he takes occasion to deny that the act "to organize forces to serve during the war" "embraces every State officer in all the departments Executive, Legislative and Judicial," for Congress expressly exempts from its provisions these very officials, besides all others whom the Governor of any State may certify to be necessary in the administration of the State government. While the constitutionality of the conscription acts has been affirmed by the Supreme Courts of almost every State in the Confederacy, it has been denied by no single one, and he is of opinion that at this time, while our enemies are seeking to subjugate and ruin us by sheer force of numbers, that the organization of a reserve force composed of those between 17 and 18, and 45 and 50 years of age, was eminently necessary, wise and expedient.

He therefore respectfully submits that, in any event, the constitutionality of the act to suspend the privilege of the writ of *habeas corpus* is a question purely for the courts. We sit here as Legislators, not as Judges. Let our Supreme Court decide, it is *its* province, not ours; and any formal judgment of this Legislature upon that point is an assumption of power upon its part, is a departure from the exercise of its legitimate functions, and in the words of one of the resolutions, "violates the fundamental maxim of republican government, which requires a separation of the departments of power." Nor does he deem it incumbent upon this body, especially at a time like the present, to express by legislative action any opinion as to the propriety or expediency of the passage of this act. It was passed by our representatives in Congress, who were the sole judges of its necessity, and it was passed by them, as they stated, upon information laid before them of conditions of public danger which rendered their action eminently necessary and proper. If its operation were confined to our own State only, we might be justified in the expression of an opinion as to its expediency. But its operation is co-extensive with the limits of the Confederacy. How are we to know what conditions of danger

existed in Louisiana, Tennessee, or elsewhere? Do we even know the condition of danger in our own State, upon which Congress may have been thoroughly and accurately informed? How then can we, in ignorance of the facts and causes upon which this legislation was based, declare it to have been inexpedient and improper?

Finally, the undersigned, though favoring the doctrine of a strict construction of the constitution, and zealous in his devotion to the rights and sovereignty of the States, is unable, under present circumstances, to foresee the manifold dangers and perils attending a temporary suspension of the privilege of the writ of *habeas corpus*, so graphically portrayed in the resolutions referred to. He has entire confidence in the ability, wisdom, moderation and patriotism of our Executive, the President of the Confederate States, and does not believe that the power conferred upon him by the act in question will be wielded by him to individual oppression or otherwise than for the internal peace, safety and honor of these Confederate States.

He therefore respectfully recommends the adoption of the following resolution.

All of which is respectfully submitted:

ELI W. HALL.

RESOLUTION ACCOMPANYING THE MINORITY REPORT FROM THE JOINT SELECT COMMITTEE ON HABEAS CORPUS.

Resolved, That in the present critical juncture of our affairs, it is inexpedient for the Legislature of North Carolina to express any opinion upon the recent legislation of Congress touching the suspension of the privilege of the writ of *habeas corpus*.

Hollinger Corp.
pH 8.5